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Attorneys for Defendants
PRUDENTIAL INSURANCE COMPANY
OF AMERICA, PILLSBURY WINTHROP LLP
EMPLOYEE LONG TERM DISABILITY PLAN, AND
PILLSBURY WINTHROP LLP EMPLOYEE TERM LIFE INSURANCE
COVERAGE PLAN

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 ELISA LOWY,

13 Plaintiff,

14 vs.

15 PRUDENTIAL INSURANCE COMPANY
16 OF AMERICA; PILLSBURY WINTHROP
17 LLP LONG TERM DISABILITY PLAN;
18 PILLSBURY WINTHROP LLP
EMPLOYEE TERM LIFE INSURANCE
COVERAGE PLAN,

19 Defendants.

CASE NO. C07 04357 JF PVT

**ANSWER OF DEFENDANTS
PRUDENTIAL INSURANCE
COMPANY OF AMERICA,
PILLSBURY WINTHROP LLP
EMPLOYEE LONG TERM
DISABILITY PLAN AND
PILLSBURY WINTHROP LLP
EMPLOYEE TERM LIFE
INSURANCE COVERAGE
PLAN TO COMPLAINT**

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21
22 COMES NOW Defendants Prudential Insurance Company of America
23 (“Prudential”), Pillsbury Winthrop LLP Employee Long Term Disability Plan
24 (“LTD Plan”), and Pillsbury Winthrop LLP Employee Term Life Insurance
25 Coverage Plan (“Life Plan”) (Prudential, LTD Plan, and Life Plan are collectively
26 referred to herein as “Defendants”), for themselves and no others, answer the
27 Complaint of Plaintiff Elisa Lowy (“Plaintiff” or “Lowy”) in accordance with the
28 numbered paragraph therein:

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1 1. Responding to Paragraph 1 of the Complaint, Defendants admit that
2 Elisa Lowy was born on May 22, 1964 and is a resident in the Northern District of
3 California. Defendants admit that Pillsbury Winthrop LLP is a law firm doing
4 business in Santa Clara County, California and created the LTD Plan and the Life
5 Plan as employee benefits. The LTD Plan was insured with Prudential effective
6 January 1, 2002 as Group Plan G-40611-CA and is in writing. Defendants admit
7 that the Life Plan is in writing and that the Life Plan was insured with Prudential.
8 Defendants admit that this claim arises under ERISA and that this Court properly
9 has jurisdiction under 29 U.S.C. § 1002, 29 U.S.C. § 1132. Except as specifically
10 admitted, Defendants deny each and every allegation.

11 2. Responding to Paragraph 2 of the Complaint, Defendants admit that
12 prior to November 6, 2003, Pillsbury Winthrop LLP created the LTD Plan and the
13 Life Plan in writing for its employees as employee benefits and that under the
14 terms of the LTD Plan disability would be paid to such employees as would
15 become totally disabled as defined by the Plan. Defendants admit that extended
16 death benefits would be provided under the Life Plan to any covered employee
17 totally disabled as defined by the Life Plan. Except as specifically admitted,
18 Defendants deny each and every allegation.

19 3. Responding to Paragraph 3 of the Complaint, Defendants admit that
20 Lowy was an employee of Pillsbury Winthrop LLP and was an employee who was
21 eligible for benefits from the Plans if she qualified under the Plans' terms. Except
22 as specifically admitted, Defendants deny each and every allegation.

23 4. Responding to Paragraph 4 of the Complaint, Defendants admit that
24 Lowy timely applied for benefits under the LTD Plan and the Life Plan. Except as
25 specifically admitted, Defendants deny each and every allegation.

26 5. Responding to Paragraph 5 of the Complaint, Defendants admit
27 subject to the terms and conditions of the LTD Plan that short term disability
28 benefits were to be paid for 25 weeks commencing from the date of disability and

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1 long term benefits would be paid at 60% of the qualified employee's salary to a
2 maximum of \$10,000 per month. Defendants admit that the Life Plan would
3 extend benefits as defined in the Life Plan to qualified employees. Except as
4 specifically admitted, Defendants deny each and every allegation.

5 6. Responding to Paragraph 6 of the Complaint, Defendants admit that
6 under the LTD Plan, Lowy was considered disabled and eligible for benefits
7 between November 13, 2003 and May 6, 2006, and that benefits have been paid
8 through July 31, 2006, but benefits have not been paid to Lowy thereafter. Except
9 as specifically admitted, Defendants deny each and every allegation.

10 7. Responding to Paragraph 7 of the Complaint, Defendants admit that
11 Lowy timely appealed the denial of benefits under the LTD Plan and the Life Plan.
12 Defendants admit that the LTD Plan denied Lowy's appeal. Defendants deny that
13 Lowy exhausted her administrative remedies under the LTD Plan, but admit that
14 she is permitted to file this action under ERISA. Except as specifically admitted,
15 Defendants deny each and every allegation.

16 8. Responding to Paragraph 8 of the Complaint, Defendants deny the
17 allegations.

18 9. Responding to Paragraph 1 of the First Cause of Action in the
19 Complaint, Defendants admit that the Long Term Disability Plan and the Life Plan
20 are employee benefits defined under 29 U.S.C. § 1002. Except as specifically
21 admitted, Defendants deny each and every allegation.

22 10. Responding to Paragraph 2 of the First Cause of Action in the
23 Complaint, Defendants admit that Plaintiff seeks to recover the benefits allegedly
24 due under the Plans including prejudgment interest and attorney fees expended
25 herein. Except as specifically admitted, Defendants deny each and every
26 allegation.

27 11. Responding to Paragraph 3 of the First Cause of Action in the
28 Complaint, Defendants admit that Plaintiff alleges that she has performed all

1 conditions required on Plaintiff's part to be performed, but deny that Plaintiff has
2 given the LTD Plan or the Life Plan proof of loss. Except as specifically admitted,
3 Defendants deny each and every allegation.

4 12. Responding to Paragraph 4 of the First Cause of Action in the
5 Complaint, Defendants deny each and every allegation.

6 **AFFIRMATIVE DEFENSES**

7 **FIRST AFFIRMATIVE DEFENSE**

8 13. The Complaint and each of the claims that are asserted against
9 Defendants fail to set forth facts sufficient to constitute a claim for relief against
10 Defendants, or any of them.

11 **SECOND AFFIRMATIVE DEFENSE**

12 14. Each and every act or statement done by Defendants and their
13 officers, employees or agents, with reference to the matters at issue were made
14 pursuant to and consistent with the terms of the long-term disability plan.

15 **THIRD AFFIRMATIVE DEFENSE**

16 15. Defendants had a duty to their other policyholders to investigate
17 Plaintiff's claim and to determine whether it was properly payable under any
18 contract of insurance. Defendants, in discharging that duty, acted properly at all
19 time herein relevant.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 16. Each and every act or statement done or made by Defendants and its
22 officers, employees, agents or insurers with reference to the matters at issue, was
23 a good faith assertion of the rights and obligations of Defendants and, therefore,
24 was privileged and justified.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 17. Defendants acted reasonably since Plaintiff did not satisfy the terms of
27 the LTD Plan or Life Plan for receipt of disability benefits.

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SIXTH AFFIRMATIVE DEFENSE

18. Defendants are informed and believe and thereon allege that Plaintiff has failed to comply with all the conditions precedent and subsequent necessary to the existence of insurance coverage under the insurance policy at issue.

SEVENTH AFFIRMATIVE DEFENSE

19. Plaintiff is estopped and barred from asserting any of the claims set forth in the Complaint.

EIGHTH AFFIRMATIVE DEFENSE

20. Plaintiff has by conduct, agreement or otherwise, and with knowledge of the matters set forth in the Complaint, accepted the benefits of any acts or omissions on the part of these Defendants and Plaintiff has waived any causes of action set forth in the Complaint.

NINTH AFFIRMATIVE DEFENSE

21. Plaintiff did not suffer from restrictions or limitations such that she was unable to perform the material and substantial duties of her regular occupation.

TENTH AFFIRMATIVE DEFENSE

22. Plaintiff did not suffer from restrictions or limitations such that she was unable to perform the duties of any gainful occupation.

ELEVENTH AFFIRMATIVE DEFENSE

23. Plaintiff was not totally disabled as defined by the terms and conditions of the applicable long term disability plan in that she was able to perform the material duties of her own occupation.

TWELFTH AFFIRMATIVE DEFENSE

24. Plaintiff was not totally disabled as defined by the terms and conditions of the applicable long term disability plan in that she was able to perform the duties of any gainful occupation.

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THIRTEENTH AFFIRMATIVE DEFENSE

25. Plaintiff's Complaint does not state the underlying claims made against Defendants with sufficient particularity to enable Defendants to determine all of their defenses (including defenses based upon the terms, conditions or exclusions of the alleged Plan at issue). Defendants therefore reserve their rights to assert all applicable defenses to the Complaint once the precise nature of such claims are determined through discovery or otherwise.

WHEREFORE, Defendants pray for judgment as follows:

1. That judgment be entered in favor of Defendants;
2. That Plaintiff takes nothing;
3. For costs and expert witness fees;
4. For reasonable attorneys' fees; and
5. For such other and further relief as this Court may deem just and proper.

Dated: October 26, 2007

GORDON & REES LLP

By: /s/ _____
Ronald K. Alberts
Lisa K. Garner
Attorneys for Defendants
PRUDENTIAL INSURANCE
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DISABILITY PLAN, and
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